Scott River, http://www.westernrivers.org/projectatlas/scott-river/

The California Court of Appeal for the Third Appellate District has issued an important decision declaring that California's powerful public trust doctrine applies to at least some of the state's overtaxed groundwater resources. The court's opinion also rejects the argument that California's Sustainable Groundwater Management Act (SGMA) displaces the public trust doctrine's applicability to groundwater resources.

The Court of Appeal's opinion in *Environmental Law Foundation v. State Water Resources Control Board* decides two key issues of first impression for California water law: first, whether the public trust doctrine applies to California's groundwater resources; and, second, if it does, if application of that doctrine has been displaced and superseded by the California Legislature's 2014 enactment of SGMA. A unanimous appellate panel answered the first question in the affirmative, the second in the negative.

The facts of the *Environmental Law Foundation* are straightforward and undisputed: the

Scott River is a tributary of the Klamath River and itself a navigable waterway located in the northwestern corner of California. The Scott River has historically been used by the public for recreational navigation and serves as essential habitat for migrating salmon listed under the Endangered Species Act.

Critically, there are groundwater aquifers adjacent to the Scott River in Siskiyou County that are hydrologically connected to the surface flows of the Scott River. Local farmers and ranchers in recent years have drilled numerous groundwater wells and pumped ever-increasing amounts of groundwater from those aquifers. As a direct result, the surface flows of the Scott River have been reduced, at times dramatically. Indeed, in the summer and early fall months, the Scott River has in some years been completely dewatered due to the nearby groundwater pumping. The adverse effects on both the Scott River's salmon fishery and recreational use of the river have been devastating.

Environmental groups and the Pacific Coast Federation of Fishermen's Associations, relying on California's venerable public trust doctrine, initially responded to this environmental crisis by petitioning Siskiyou County and the State Water Resources Control Board to take administrative action to limit groundwater pumping in the Scott River watershed. Both the Board and the County declined to do so.

Plaintiffs responded by filing suit, arguing that groundwater resources that are interconnected with the surface water flows of the Scott River are subject to and protected by the state's public trust doctrine. Siskiyou County disputed that claim, arguing that the public trust doctrine is wholly inapplicable to groundwater and that the country has no duty to limit groundwater pumping, even in the face of the resulting environmental damage to the Scott River ecosystem. (The Board, by contrast, eventually reconsidered its position, ultimately adopting plaintiffs' view that groundwater resources interconnected with surface water flows are indeed subject to the public trust doctrine.)

The trial court concluded that the public trust doctrine does apply to the groundwater resources of the Scott River region. While the litigation was pending there, however, the California Legislature enacted SGMA, which for the first time creates a statewide system of groundwater management in California, administered at the regional level. Siskiyou County seized upon that legislation to argue that even if the public trust doctrine would otherwise apply to the County's groundwater resources, the doctrine was automatically displaced and made inapplicable to groundwater as a result of SGMA's allegedly "comprehensive" statutory scheme. The trial court rejected this backstop argument as well, and the County appealed.

The Court of Appeal's decision today resoundingly affirms the trial court on both issues. On the threshold public trust claim, the justices rely heavily on the California Supreme Court's landmark public trust decision, *National Audubon Society v. Superior Court.* In *National Audubon*, the Supreme Court held that the public trust doctrine, a foundational principle of California natural resources law, fully applies to the state's complex water rights system. Specifically, *National Audubon* found that the City of Los Angeles' diversion of water from the non-navigable, freshwater streams flowing into Mono Lake, which were reducing the lake level and causing environmental damage to the lake ecosystem, could be limited by state water regulators under the public trust doctrine.

The court in the *Environmental Law Foundation* concluded that the rationale and holding of *National Audubon* are fully applicable to the facts of the Scott River case. Rejecting the County's argument that extractions of groundwater should be treated differently from the diversions of surface water that were found in *National Audubon* to be causing environmental damage to Mono Lake, the Court of Appeal declares:

> "The County's squabble over the distinction between diversion and extraction is…irrelevant. The analysis begins and ends with whether the challenged activity harms a navigable waterway and thereby violates the public trust."

Accordingly, the *Environmental Law Foundation* court concludes that the public trust doctrine fully applies to extractions of groundwater that adversely affect navigable waterways such as the Scott River.

Turning to the County's SGMA-based defense, the Court of Appeal had little difficulty concluding that by enacting that statute the Legislature did not intend to occupy the entire field of groundwater management and thereby abolish the public trust doctrine's application to the groundwater resources at issue. (The County had argued that SGMA's enactment not only relieves the County of any public trust-related duties, but also precludes the State Water Resources Control Board from acting to protect public trust resources from environmental damage resulting from excessive groundwater extractions.) The Court of Appeal concludes:

> "[W]e can evince no legislative intent to eviscerate the public trust in navigable waters in the text or scope of SGMA…We conclude that the enactment of SGMA does not, as the County maintains, occupy the field, replace or fulfill public trust

> duties, or scuttle decades of decisions upholding, defending, and expanding the public trust doctrine."

Environmental Law Foundation v. State Water Resources Control Board represents an important judicial ruling concerning the public trust doctrine's application to California's water resources–perhaps *the* most important since the California Supreme Court decided the iconic *National Audubon* decision 35 years ago. Additionally, *Environmental Law Foundation* is the first California appellate decision expressly applying the public trust doctrine to (at least some of) the state's groundwater resources. It's also the first appellate decision interpreting SGMA, although that decision limits the application of the statute and harmonizes it with longstanding California public trust doctrine.

Perhaps most importantly, the *Environmental Law Foundation* opinion represents yet another ringing judicial affirmation of the public trust doctrine's continuing, vital and foundational role in California natural resources law and policy. The California judiciary has in recent years consistently given a robust interpretation to and application of the public trust doctrine. *Environmental Law Foundation* is but the latest manifestation of that most welcome trend.

(*Full disclosure notice: the author of this post serves as counsel of record for the prevailing plaintiffs in the Environmental Law Foundation v. State Water Resources Control Board case.)*